

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/694,676	10/24/00	MCNALLY	V 2426-108

JASON M. SHAPIRO  
ROTHWELL, FIGG, ERNST & MANBECK, P.C.  
SUITE 701-E  
555 13TH STREET, N.W.  
WASHINGTON DC 20005

HM12/0223

EXAMINER

REAMER, J

ART UNIT	PAPER NUMBER
1614	3

DATE MAILED:

02/23/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No. <b>09/694,676</b>	Applicant(s) <b>McNally et al</b>
Examiner <b>James H. Reamer</b>	Group Art Unit <b>1614</b>

Responsive to communication(s) filed on \_\_\_\_\_.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

Claim(s) 2-8 and 28 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 2-8 and 28 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) 09/319,544.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1614

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 to 8 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dowrick et al in combination with Lazonby. The concept of preventing mastitis in cows by injecting a sealing material into the teats of cows to form a barrier against infection is taught by Dowrick et al. The composition disclosed for the seal material is a siloxane polymer of sufficiently low viscosity as to facilitate application by injection. The addition of an antibacterial agent is an optional additive for the composition. Lazonby discloses a composition similar to the instant composition, a paraffin wax containing a heavy metal salt such as bismuth along with an antibacterial agent for injection into the teat for the treatment and/or prevention of mastitis. The substitution of the composition of Lazonby, with or without the added antibacterial agent, for the siloxane polymer is considered to be obvious absent evidence of unexpected results. The use of a teat sealing material which does not contain an antibacterial material would be obvious when treating cows who are healthy since the antibacterial material would not be necessary in the formulation unless infection was present. The sealing of the teat with the paraffin and heavy metal

Art Unit: 1614

salt would be sufficient for prophylactic treatment absent infection. The instant composition is considered to be *prima facie* obvious over the cited references absent evidence of unexpected properties.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are cited to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Reamer whose telephone number is (703) 308-4461.

*James H. Reamer*  
JAMES H. REAMER  
PRIMARY EXAMINER  
GROUP 1600 ART UNIT 1614

JHR

February 20, 2001